TEG/LVI Environmental Services, Inc. *and* Laborers International Asbestos and Toxic Abatement Local Union 882, Laborers' International Union of North America, AFL–CIO. Cases 21–CA–33118 and 21–CA33195

May 24, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Pursuant to charges filed on January 8 and February 24, 1999, respectively, the General Counsel of the National Labor Relations Board issued a consolidated complaint on March 17, 1999, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the certification of Laborers International Asbestos and Toxic Abatement Local Union 882, Laborers' International Union of North America, AFL–CIO (Local 882) and International Association of Heat & Frost Insulators & Asbestos Workers Union, Local No. 5, AFL–CIO (Local 5) (or collectively the Unions) in Case 21–RC–19889.[1] (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and submitting affirmative defenses.

On April 8, 1999, the General Counsel filed a Motion for Summary Judgment. On April 13, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent denies that it is refusing to bargain and to furnish information that is relevant and necessary to the Union's role as bargaining representative,[2] and attacks the validity of the certification on the basis of its objections to the Unions' preelection conduct in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.[3] We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing regarding the Unions' request for information. The complaint alleges, and the Respondent denies, that the Unions requested the following information from the Respondent on January 25, 1999:[4]

1. List of current employees containing the names, addresses, job classifications, rates of pay and telephone numbers if any.
2. List of present job locations including site addresses.

[1] 326 NLRB 1469 (1998).

[2] While the Respondent's answer denies a refusal to bargain, the General Counsel has submitted a copy of its letter of October 20, 1998, to the business manager of Local 882, which clearly states that it "declines your request for bargaining" on the basis of its disagreement with the Board's decision certifying the Unions. Further and contrary to the Respondent, we find that there is a request for bargaining from the jointly certified Unions. Thus, the General Counsel has submitted a copy of the October 16, 1998 letter to the Respondent from the business manager of Local 882, which clearly requests a meeting to negotiate "a Collective Bargaining Agreement between [the Respondent] and Laborers' International Union of North America, AFL–CIO, Local Union 882, and the International Association of Heat & Frost Insulators & Asbestos Workers Union, Local 5." In the absence of any evidence indicating this letter had a contrary purpose, we find that one jointly certified union can make a bargaining demand in the name of the jointly certified unions. See *U.S. Pipe & Foundry Co*., 247 NLRB 139, 142 (1980) ("It has been well settled that where there were joint bargaining entities, be they employers or unions, the Board has treated them as a single de jure entity, and the conduct . . . of one is imputed to the other.").

[3] In its answer to the complaint, the Respondent denied the appropriateness of the unit. By entering into a Stipulated Election Agreement in the underlying representation proceeding, however, the Respondent agreed that the unit is appropriate for purposes of collective bargaining. Accordingly, the Respondent may not litigate that issue in this proceeding. See, e.g., *Biewer Wisconsin Sawmill*, 306 NLRB 732 fn. 1 (1992).

In its response to the Notice to Show Cause, the Respondent contends that the "certified bargaining unit no longer exists." Specifically, the Respondent states the certified unit includes employees of the Respondent, TEG/LVI Environmental Services, Inc., and employees of LVI Environmental Services, Inc., but that the latter entity "no longer performs work or has employees in the geographic area described in the certification." Based on this alleged change in circumstances since the February 9, 1998 approval of the Stipulated Election Agreement, the Respondent requests that a hearing be held to determine the appropriateness of the unit.

We deny the Respondent's request. Absent newly discovered evidence or special circumstances, the Board is warranted in determining the unit to be appropriate on the basis of the parties' Stipulated Election Agreement. See *Telemundo de Puerto Rico v. NLRB*, 113 F.3d 270, 277–278 (1st Cir. 1997). Here, the Respondent does not even claim that the alleged cessation of operations by LVI Environmental Services, Inc. constitutes newly discovered evidence. In fact, the Respondent has failed to state specifically when this alleged change occurred and has failed to explain why it was first brought to the Board's attention in the Respondent's response to the Notice to Show Cause. Furthermore, it is well established that a reduction in the size of a bargaining unit does not constitute special circumstances. See *NLRB v. Mr. B. IGA*, 677 F.2d 32, 34 (8th Cir. 1982). Accordingly, the Respondent's contentions raise no material issues of fact requiring a hearing.

[4] A copy of the January 25, 1999 letter from the business manager Local 882 to the Respondent's counsel is attached to the General Counsel's motion. The Respondent does not claim that it did not receive the letter.

3. Production bonus information including amount/percent payable per job conclusion, on a monthly or yearly basis.
4. Medical plan insurance, 401(K), and/or profit sharing information including pamphlets/brochures.

For the reasons set out in footnote 2, supra, we find that the Respondent's denial that the Unions requested this information does not raise an issue warranting a hearing. Further, it is well established, that such information is presumptively relevant and necessary for bargaining inasmuch as the request relates to wages, hours, and terms and conditions of employment of the unit employees. The Respondent's denial of its relevance, without more, does not raise an issue warranting a hearing. See *Verona Dyestuff Division*, 233 NLRB 109, 110 (1977). Accordingly, we grant the Motion for Summary Judgment.[5]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a California corporation with its main office located at 109 South Reyes Avenue, Rancho Dominguez, California, has been engaged in the nonretail business of environmental cleanup services and fireproofing in the State of California. During the calendar year 1998, the Respondent, in conducting its business operations described above, purchased and received at its California locations goods valued in excess of $50,000 from other enterprises within the State of California, each of which other enterprises had received these goods directly from points outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Laborers International Asbestos and Toxic Abatement Local Union 882, Laborers' International Union of North America, AFL–CIO and International Association of Heat & Frost Insulators & Asbestos Workers Union, Local No. 5, AFL–CIO are labor organizations within the meaning of Section 2(5) of the Act.[6]

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held March 5 and 6, 1998, the Unions were certified on September 30, 1998, as the exclusive collective-bargaining representatives of the employees in the following appropriate unit:

> All full-time and regular part-time drivers, fire proofers, working foremen, maintenance mechanics, demolition and environmental employees employed by TEG/LVI Environmental Services, Inc. and all employees of LVI Environmental Services, Inc. ("LVI" and jointly as "the Employer") during the referenced payroll period employed in these categories [sic], and including but not limited to workers involved in site mobilization, initial site cleanup, site preparation, removal of asbestos-containing material and toxic waste employed by the Employer in the 12 counties of Southern California (Los Angeles, Inyo, Mono, Orange, Riverside, San Bernardino, Imperial, Ventura, Santa Barbara, San Luis Obispo, Kern, San Diego and including Richardson Rock, Santa Cruz Island, Arch Rock, San Nicholas Island, Santa Barbara Island, San Clemente Island, Santa Rosa Island, Anacapa Island and the Channel Islands Monument); excluding estimators, operations managers, inventory and control employees, sales employees, project engineers, contracts administrators, health and safety officers, professional employees, office clerical employees, guards and supervisors as defined in the Act.

The Unions continue to be the exclusive representatives under Section 9(a) of the Act.

B. Refusal to Bargain

Since October 16, 1998, the Unions, by letter, have requested the Respondent to bargain, and, since October 20, 1998, the Respondent has refused. Since January 25, 1999, the Unions, by letter, have requested the Respondent to furnish information, and, since that date, the Respondent has refused. We find that these refusals constitute unlawful refusals to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after October 20, 1998, to bargain with the Unions as the exclusive collective-bargaining representatives of employees in the appropriate unit and by refusing on and after January 25, 1999, to furnish the Unions requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and

[5] Member Hurtgen dissented from the certification in the underlying representation case. However, he agrees that the Respondent has not presented anything new here which warrants denial of a bargaining order. Accordingly, for institutional reasons, he joins in this decision.

[6] In its answer to the complaint, the Respondent denied the labor organization status of both Local 882 and Local 5. By entering into a Stipulated Election Agreement in the underlying representation proceeding, however, the Respondent agreed that the Unions are labor organizations. Accordingly, it is precluded from challenging that status in this case. *Biewer Wisconsin Saw Mill*, supra.

desist, to bargain on request with the Unions and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Unions the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co*., 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co*., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, TEG/LVI Environmental Services, Inc., Rancho Dominguez, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Laborers International Asbestos and Toxic Abatement Local Union 882, Laborers' International Union of North America, AFL–CIO and International Association of Heat & Frost Insulators & Asbestos Workers Union, Local No. 5, AFL–CIO, the joint representative, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Unions information that is relevant and necessary to their role as the joint exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Unions as the joint exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time drivers, fire proofers, working foremen, maintenance mechanics, demolition and environmental employees employed by TEG/LVI Environmental Services, Inc. and all employees of LVI Environmental Services, Inc. ("LVI" and jointly as "the Employer") during the referenced payroll period employed in these categories [sic], and including but not limited to workers involved in site mobilization, initial site cleanup, site preparation, removal of asbestos-containing material and toxic waste employed by the Employer in the 12 counties of Southern California (Los Angeles, Inyo, Mono, Orange, Riverside, San Bernardino, Imperial, Ventura, Santa Barbara, San Luis Obispo, Kern, San Diego and including Richardson Rock, Santa Cruz Island, Arch Rock, San Nicholas Island, Santa Barbara Island, San Clemente Island, Santa Rosa Island, Anacapa Island and the Channel Islands Monument); excluding estimators, operations managers, inventory and control employees, sales employees, project engineers, contracts administrators, health and safety officers, professional employees, office clerical employees, guards and supervisors as defined in the Act.

(b) Furnish the Unions information they requested on October 16, 1998.

(c) Within 14 days after service by the Region, post at its facility in Rancho Dominguez, California, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 21 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 20, 1998.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Laborers International Asbestos and Toxic Abatement Local Union 882, Laborers' International Union of North America, AFL–CIO and International Association of Heat & Frost Insulators & Asbestos Workers Union, Local No. 5, AFL–CIO as the joint exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Unions information that is relevant and nec-

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

essary to its role as the joint exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Unions and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All full-time and regular part-time drivers, fire proofers, working foremen, maintenance mechanics, demolition and environmental employees employed by TEG/LVI Environmental Services, Inc. and all employees of LVI Environmental Services, Inc. ("LVI" and jointly as "the Employer") during the referenced payroll period employed in these categories [sic], and including but not limited to workers involved in site mobilization, initial site cleanup, site preparation, removal of asbestos-containing material and toxic waste employed by us in the 12 counties of Southern California (Los Angeles, Inyo, Mono, Orange, Riverside, San Bernardino, Imperial, Ventura, Santa Barbara, San Luis Obispo, Kern, San Diego and including Richardson Rock, Santa Cruz Island, Arch Rock, San Nicholas Island, Santa Barbara Island, San Clemente Island, Santa Rosa Island, Anacapa Island and the Channel Islands Monument); excluding estimators, operations managers, inventory and control employees, sales employees, project engineers, contracts administrators, health and safety officers, professional employees, office clerical employees, guards and supervisors as defined in the Act.

WE WILL furnish the Unions the information they requested on October 16, 1998.

TEG/LVI ENVIRONMENTAL SERVICES, INC.